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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,183	10/02/2001	Brian L. Quarendon	2400-372A	3587

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EXAMINER

SHAPIRO, JEFFERY A

ART UNIT PAPER NUMBER

3653

DATE MAILED: 04/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,183

Applicant(s)

QUARENDON ET AL.

Examiner

Jeffrey A. Shapiro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27,44,46 and 47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27,44,46 and 47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12/17/01. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 27, 44, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter (US 6,253,193 B1).

Ginter discloses the following.

- a. a user interface allowing for the purchase of music (see figure 7, noting, for example, display (614), keyboard (612) and voice recognition (613)—see also figures 1, 1a, 2 and 72a-b);
- b. a system adapted to download the music for ultimate playback in a user device (see figure 7, noting, for example, cable (628), scanner (626), satellite (624), compact disc (620) and modem (618);
- c. said system downloads music directly to a memory unit associated with a user device (see figure 7, noting, for example, cable (628), scanner (626), satellite (624), compact disc (620) and modem (618);
- d. said system downloads music over a radio frequency (again, note cable (628);
- e. the music is retrieved from a location remote from user prior to downloading to said user (see figures 1, 1a and 2);

- f. the fuel dispenser downloads the music indirectly to a memory unit associated with the user (see figure 7, noting, for example, display (614), keyboard (612) and voice recognition (613)—see also figures 1, 1a, 2 and 72a-b);
- g. said system downloads the music to a portable storage medium (620);
- h. said portable storage medium (620) comprises a computer readable portable storage medium;
- i. said system downloads the music to a playback device associated with the user (note device drivers (738 and 736);
- j. said system begins downloading the music during an associated fuel transaction;
- k. a remote retail terminal finishes downloading the music (note that the remote devices described above finishes downloading the music);
- l. said system instructs a remote retail terminal to download the music (see figures 1a, 1b and 2);
- m. said system is associated with a car wash facility, quick serve restaurant or retail terminal in a convenience store within a fueling environment (see col. 233, lines 8-12 and 25-30);
- n. music dispenser comprising a user interface configured to enable a consumer to initiate a multistage music purchase wherein an order is initially placed at the music dispenser and at least some portion of the

music is received from a retail terminal remotely positioned from the music dispenser (see figures 1, 1a and 2);

Note that the music dispenser, as described in Applicant's claims, broadly indicates that it is part of a fuel dispenser in a fuel dispensing environment.

Nonetheless, the system of Ginter, which also broadly discloses a variety of user appliances, financial transaction schemes, and communication methods. See, for example, figures 1, 1A, 7, col. 57, lines 18-49, col. 58, lines 12-24 and col. 60, lines 20-48.

Note that col. 234, lines 64-67 and col. 235, lines 1-13, noting in particular, lines 8-10 mention use of the Ginter system at other commercial establishments, such as gasoline stations.

At the very least, it would have been obvious for one ordinarily skilled in the art to use a fuel dispenser having a computer as part of a virtual distribution environment (VDE).

The suggestion/motivation to do so would have been to provide music at a gasoline station. See col. 235, lines 1-13, which mentions in part, a gasoline station as one of several example retail establishments in which the VDE system may be used. See also col. 233, lines 25-30, which mentions that a portable appliance (2600) may be used for secure communication with a retail terminal. A fuel dispenser may be construed as a retail terminal. Further, Col. 59, lines 39-41 indicates that VDE participants may have an electronic appliance which may be or contain a computer.

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Fuel dispensers, as currently well-known in the art, have computers. See, for example, Yamashita et al (US 4,660,153), figures 1 and 3 which illustrate a computer in a fuel dispenser which generates sound and music. See also Claim 5 of Yamashita et al, which describes one or a plurality of melodies used by said fuel dispenser as a greeting.

Note that, at the very least, the system of Ginter et al is considered to be inherently capable of processing a transaction automatically. It is also inherent that one can nest one transaction amongst several other transactions or tasks, since this system is automatic and computer-based. See, for example, Ginter, Col. 23, lines 40-42 and col. 30, lines 42-65 discloses simultaneous transactions occurring in various business models. Therefore, it would have been obvious for one ordinarily skilled in the art to process simultaneous transactions, of either multiple music transactions, individually, or along with other transactions for food or gasoline.

Note also that Ginter's system operates with a central database of music files.

3. Claims 27, 44, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 5,857,156).

Anderson discloses the following.

- a. a user interface allowing for the purchase of music (see col. 1, lines 11-18);
- b. a system adapted to download the music for ultimate playback in a user device (note that since the system of Anderson is a computer-based system, it is inherently capable of downloading music, for example, in MP3

format, to any place in said system, which includes inside an automobile or at a point of transaction;

c. said system downloads music directly to a memory unit (24) associated with a user device;

d. the music is retrieved from a location remote (note that the system of Anderson, as illustrated in figure 1, shows, a person in an automobile or other locations (20, 26, 28 and 32)) from a user prior to downloading to said user;

e. the fuel dispenser downloads the music indirectly to a memory unit associated with the user (note that it would be obvious to provide a fuel dispenser as a means to download said music to said user, as several various transaction locations are described and illustrated (see, for example, figure 1, outdoor mall or (34), consumer appliances), noting also that the claims appear to describe a fuel dispenser in broad terms);

f. said system downloads the music to a portable storage medium;

g. said portable storage medium comprises a computer readable portable storage medium (52, for example);

h. said system downloads the music to a playback device (24) (see figures 2 and 4, noting that pagers and radios are capable of playing back MP3 formatted music) associated with the user;

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- i. said system begins downloading the music during an associated fuel transaction (note that the system is capable of downloading music during a fuel transaction as the automobile is being refueled);
- j. a remote retail terminal (36 or 34) finishes downloading the music;
- k. said system instructs a remote retail terminal to download the music (see figure 1;
- l. said system is associated with a car wash facility, quick serve restaurant or retail terminal in a convenience store within a fueling environment (note again, that as several various transaction environments are mentioned by Anderson, and that Applicant's claims, as currently written, claim said fuel environment in a broad sense, it would have been obvious to a person of ordinary skill in the art to have used the system of Anderson in a fuel environment);
- m. music dispenser (note that the system of Anderson may be construed as a music dispenser, and also has a computer (44), which is used as a fulfillment data server, which is capable of downloading music in MP3 format) comprising a user interface configured to enable a consumer to initiate a multistage music purchase wherein an order is initially placed at the music dispenser and at least some portion of the music is received from a retail terminal remotely positioned from the music dispenser;

Note that the music dispenser, as described in Applicant's claims, broadly indicates that it is part of a fuel dispenser in a fuel dispensing environment. Nonetheless, the system of Anderson, which also broadly discloses a variety of user appliances, financial transaction schemes, and communication methods. See abstract.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have used the device of Anderson as a means to receive music and interact with a vehicle based system located in a fuel dispensing environment.

The suggestion/motivation would have been to provide music data (such as in the form of an MP3 file) to a computer and memory located inside a vehicle. See abstract of Anderson.

Note also that Ginter's system operates with a central database of music files.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (571)272-6944. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Shapiro
Examiner
Art Unit 3653

April 17, 2005



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